IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

First Appeal No. 384 of 2006

BATA INDIA L.TD. ... appellant
vs
MANOJ HARISHANKAR KAKKAR AND ANR. ... respondents

Mr. Kal Sharafat i/b.
M/s. Hemant Sahai Associates. .. respondents.

CORAM: R.M.S. KHANDEPARKAR
&
SMT. R.S. DALVI JJ.
DATE:04/04/2006

P.C.:

1. Heard. The appellant challenges the judgment and decree dated 12th October 2004 passed by the Learned 8th additional District Judge, Pune. By the impugned judgment and decree the trial court has allowed the suit and directed the appellant to pay a sum of Rs.4,33,300/- along with interest at the rate of 9% per annum from the date of the suit till the realization of the amount. Undisputedly the amount which was claimed and decreed relates to the tax amount payable to the Corporation in relation to the premises which came to be utilised for the business by the appellant and the respondent for the joint venture concern.
2. The trial court while dealing with the issue as to whether the appellant is liable topay the said amount alongwith the interest thereon has held that under letter dated 30th January

1997, Exhibit 22 the appellant had categorically agreed to bear the expenses towards the tax as well as maintenance charges payable to the Society. The only issue which was sought to be argued is that they under letter dated 30th January 1997 had agreed to pay the expenses relating to the tax and it was only up to the date of the letter and not thereafter and that there was no agreement for payment of the increased amount of tax and the demand in question relating to the increased amount of tax is unjust.

3. A perusal of the letter dated 30th January 1997, clause 4 thereof, clearly reads thus:

> "4) That, the Municipal Tax and the Maintenance of Society Charges and Sinking Fund for the portion of the premises occupied by us, will be paid by us along with the Charges relating to consumption of electricity by us, in the premises."

4. It is undisputed that the business came to an end on 27.4.2000. It is also undisputed that the amount related to the period prior to the said date. It is also undisputed that there was increase of the tax amount by the Corporation. In the background of these undisputed facts and letter dated 30th January 1997 unconditionally agreeing to pay the Municipal tax and the maintenance charges etc., and the amount being related to the tax, no fault can be found of the finding arrived at by the trial court relating to the liability to pay the tax. The contention that under the letter dated 30th January 1997 there

was no agreement for payment of the increased amount of tax subsequent to 30th January 1997 is totally devoid of substance. There was no such reservations made under the said letter and there was no specific plea by the appellant in that regard. This is purely an after thought defence without having any factual foundation to justify such defence.

5. Even the letter dated 30th January 1997 clearly specifies that the appellant had agreed on the terms incorporated in the said letter which included item no.4 quoted above. Obviously the appellant had agreed to pay the Municipal taxes which accrued upto the date the agreement was subsisting i.e, 26th April 2000. There is no dispute on this aspect.
6. Being so there is absolutely no case for interference in the impugned order and hence the appeal is liable tobe dismissed and is summarily dismissed under Order 41 Rule 11 CPC. There shall be no order as to costs.

(SMT. R.S. DALVI J.) (R.M.S.KHANDEPARKAR J)